

March 5, 2018

VIA ECF & OVERNIGHT MAIL

The Honorable George B. Daniels
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
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***In re Terrorist Attacks on September 11, 2001*, No. 03 MDL 1570 (GBD) (SN) (S.D.N.Y.)**

This document relates to:

The Underwriting Members of Lloyd's Syndicate 2, et al. v. Al Rajhi Bank, et al., No. 16-cv-7853; *Aguilar, et al. v. Kingdom of Saudi Arabia, et al.*, No. 16-cv-09663; *Addesso, et al. v. Kingdom of Saudi Arabia, et al.*, No. 16-cv-09937; *Hodges, et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-0117; *Aiken, et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-00450; *Charter Oak Fire Insurance Co., et al. v. Al Rajhi Bank, et al.*, No. 17-cv-02651; *Abarca, et al., v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-03887; *Arrowood Indemnity Co., et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-03908; *Abedhajajreh, et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-06123; *Muenchener Rueckversicherungs-Gesellschaft Aktiengesellschaft in Muenchen, et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-07914; and *Abbate, et al. v. Kingdom of Saudi Arabia, et al.*, No. 17-cv-8617.

Supplemental Authorities

Dear Judge Daniels:

This letter responds to Plaintiffs' letter dated March 1, 2018 (as corrected on March 2, 2018) (ECF No. 3914), regarding the supplemental authorities *Linde v. Arab Bank, PLC*, No. 16-2119-cv (L) (2d Cir. Feb. 9, 2018), and *Fields v. Twitter, Inc.*, No. 16-17165 (9th Cir. Jan. 31, 2018), which Al Rajhi Bank noticed to the Court by letter dated February 23, 2018 (ECF No. 3904).

Al Rajhi Bank limits this response to correcting two important errors in Plaintiffs' letter-brief to the Court. *First*, Plaintiffs' letter mischaracterizes *Linde* as "confirm[ing]" that JASTA "imposes 'liability'" on Al Rajhi Bank under an aiding-and-abetting theory. PEC Ltr. 2. *Linde* held that even though in that case Arab Bank's assistance to Hamas was found sufficient by a jury to establish that Arab Bank proximately caused the attacks at issue (a conclusion the Court of Appeals declined to assess), that finding was not necessarily sufficient to establish "substantial assistance" to Hamas under *Halberstam*. *Linde* Op. 32 (quoting factors in *Halberstam*, 705 F.2d at 484–85); *id.* at 33 ("[T]he substantiality inquiry for causation is not identical to the substantiality inquiry for aiding and abetting."). Unlike Arab Bank, which was found to have

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directly assisted Hamas (*see Linde* Op. 12-13), Al Rajhi Bank is alleged to have donated to and performed routine banking services for *third-party* Saudi charities, which in turn purportedly assisted Al Qaeda. Yet the Amended Complaint fails to allege any facts supporting a plausible inference either that Al Rajhi Bank “*substantially* assisted” any of these charities or that any of the charities ever passed on any such assistance to Al Qaeda, much less “*substantially* assisted” Al Qaeda in committing the September 11 attacks. ARB Reply (ECF No. 3869) at 7-8.

Second, Plaintiffs also are incorrect that *Fields* “Has No Meaningful Relevance to the Present Disputes.” PEC Ltr. 5. The Ninth Circuit rejected the *Fields* plaintiffs’ argument — precisely the argument made by Plaintiffs here (Opp’n (ECF No. 3835) at 48) — that *Rothstein* and the District Court’s now-vacated decision in *Linde* adopted a lower standard of proximate cause for ATA claims. *Fields* Op. 15-17. *Fields* concluded that under *Rothstein*, to allege proximate causation, the Second Circuit — following *Holmes* — requires that a defendant’s conduct “led directly” to a plaintiff’s injuries. *Fields* Op. 15-16. The Amended Complaint does not contain a single factual allegation supporting a plausible inference that Al Rajhi Bank’s alleged conduct “led directly” to the September 11 attacks. *E.g.*, ARB Mem. (ECF No. 3703) at 20-21.

Respectfully submitted,

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cc: Counsel of Record (via ECF)